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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,434

12/08/2003

John P. Furber

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7590

08/18/2006

EXAMINER

EL ARINI, ZEINAB

ECOLAB INC.

MAIL STOP ESC-F7, 655 LONE OAK DRIVE

EAGAN, MN 55121

ART UNIT

PAPER NUMBER

1746

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/730,434	<b>Applicant(s)</b> FURBER ET AL.	
	<b>Examiner</b> Zeinab E. EL-Arini	<b>Art Unit</b> 1746	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 8-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-16 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/19/04, 3/19/05, 3/23/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-7, drawn to a method for dispensing, classified in class 134, subclass 34.
  - II. Claims 8-16, drawn to a product dispenser, classified in class 134, subclass 93.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case The apparatus as claimed can be used to practice another process such as one without the step of concurrently supplying water from water source to rinse arms of a dishwashing machine.
3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Andrew Sorensen on 8/10/06 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-7.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 8-16 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Specification***

7. The abstract of the disclosure is objected to because it does not directed to a method for dispensing a use solution from a solid product into a dishwashing machine as claimed herein. Correction is required. See MPEP § 608.01(b).

8. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Drawings***

9. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "118" and "20" have both been used to designate cavity. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement

drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

10. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "cavity 118" has been disclosed on page 10, line 4, however the drawings (Figs. 1-7) do not include "118". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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12. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. In claim 1, step b), "concurrently supplying water -----to rinse arms of a dishwashing machine and said water inlet" is confusing term.

In claim 3, line 3, "solid product being said desired shape" is confusing and indefinite term.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everson et al. (6,773,668) in combination with Tarara et al. (WO 00/25658).

Everson et al teach a method for dispensing a use solution from a solid detergent into a dishwashing machine. In the method of Everson et al, a solid detergent 50 is placed in a dispenser 10 having a housing defining a cavity 31. The housing includes a water inlet 28 at the bottom thereof, a use solution outlet 29, and an overflow outlet 30. Water is supplied to the bottom of the housing, flooding the housing from the bottom to form the use solution. See co1.3, lines 49-64 and co1.4, lines 1-10. Everson et al disclose that uniform dissolution and a constant shape of the detergent are achieved by

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the dispenser. See co1.8, line 59 to co1.9, line 3. Re. the limitation of claims 2-3, see col. 5, lines 31-41.

Everson et al do not disclose that water is supplied to the rinse arms of the dishwasher concurrently with the supply of water to the dispenser, the cascading, the dispensing rate, and directing water from water inlet to a plurality of apertures along a length of the back, as claimed.

Tarara et al disclose a detergent dispenser for a dishwashing machine wherein "a portion of the service water from a water supply such as the final rinse line is diverted to a water spray- on solid block detergent dispenser." See page 4, lines 24-26. Tarara et al teach that whenever the rinse line is operated, the correct amount of detergent is dispensed to maintain the effective correct cleaning amount of detergent in the wash water. See page 4, line 31- page 5, line 2, and the abstract. For this reason, it would have been obvious to operate the dispenser of Everson et al in the same manner, thus maintaining an effective concentration of the detergent in the sump. It would have been obvious for one skilled in the art to adjust the rate of dispensing the rinse additive to obtain optimum results. The dispenser taught by Everson et al. in combination with Tarara et al. is able to perform the fanning, the cascading and directing the water as claimed.

### ***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

17. Claims 1-3, 5, and 7 are rejected under 35 U.S.C. 102(a) as being anticipated by Sowle et al. (US 2003/0168085).

Sowle et al. disclose a method for dispensing a use solution from a solid product into a dishwashing machine. The method comprising placing a solid product in a dispenser, the dispenser, supplying water from the water source to the rinse arms, creating the use solution, allowing all the use solution and said water to exit the cavity, and directing the use solution into the dishwashing machine, and the support and insert member as claimed. See the abstract, Figs. 3-6, paragraphs 6, 19-21, 27, 32-33, and claims 9-16.

#### ***Information Disclosure Statement***

18. The information disclosure statement filed 3/9/05 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. The Japanese reference has not been considered as no English translation or statement of relevance was filed with the document.

19. The information disclosure statement filed 3/19/04 has been considered in part. The patent to Bricker et al. has not been considered as this patent has been withdrawn.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zeinab E. EL-Arini whose telephone number is (571) 272-1301. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Zeinab E. EL-Arini  
Primary Examiner  
Art Unit 1746

ZEE  
8/16/06